



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: CDA Inc.
File: B-224971
Date: February 13, 1987

DIGEST

1. Proposal that offered to supply one building did not meet material requirement for supplying two buildings and was, therefore, properly found to be technically unacceptable.
2. Where full and open competition and reasonable prices are obtained by the government and the record does not show--and the protester does not allege--a deliberate attempt by the contracting agency to exclude the protester from competition, the protester's failure to receive an amendment materially changing solicitation requirements does not affect the validity of the award made to another offeror.

DECISION

CDA Inc. protests the award of a contract to International Shelter Systems, Inc. for a steel building under Defense Construction Supply Center (DCSC) request for proposals (RFP) No. DLA700-86-R-7733. The CDA proposal was rejected by DCSC as technically unacceptable due to CDA's failure to acknowledge RFP amendment No. 0001, which contained certain drawings that DCSC judged to be essential to proper contract performance. CDA maintains that its low-priced offer contained sufficient data to make it technically acceptable and requests that the award be made to it.

We deny the protest.

The RFP requested offers for one steel building (Federal Supply Class 5410) "per attached drawings and specifications" and for two sets of erection drawings. The RFP also advised that the drawings were "FOR REFERENCE ONLY." Initial proposals were to be submitted by June 18. CDA submitted a timely proposal dated June 16. Amendment No. 0001 to the RFP was issued on June 20. The amendment provided the "attached

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drawings," which had not been included with the RFP as originally issued, and again advised that these were "for reference only." These drawings provided no information already in the RFP specifications except for the locations of the door, window, and framed opening on the front of the building; the locations of the side windows, one on each side of the building; and the location of the vents on the roof of the building. The amendment also extended the deadline for submitting proposals to July 2.

Amendment No. 0002 to the RFP was issued on August 6. This amendment, among other things, extended the proposal receipt date to August 20 and increased from one to two the number of buildings that would be purchased. The amendment also requested the submission of best and final offers by the August 20 receipt date.

CDA acknowledged neither amendment, nor did it submit a best and final offer. Award was made on September 5. By letter dated September 25, CDA was notified of the rejection of its offer and of the award.

DCSC states that an unnamed employee of CDA called prior to the August 20 deadline for the submission of best and final offers and that it advised that person that RFP amendments had to be acknowledged in order for a proposal to be considered for award. In any event, each amendment did advise offerors that acknowledgment should be made and that a failure to do so could result in the rejection of the offer.

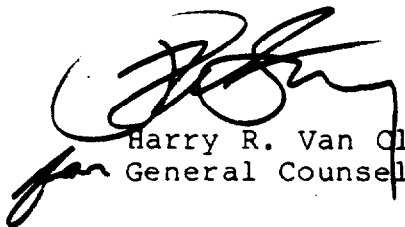
CDA, noting that it did receive amendment No. 0001, contends that the information in the first amendment regarding the location of the windows, door, framed opening, and vents is not such as to require acknowledgment since these matters are always dealt with during contract performance. Accordingly, it believes that its offered building was technically acceptable. CDA states that, contrary to the assertions of DCSC, it did not call DCSC nor did it receive amendment No. 0002 requiring a second building.

We will assume for the purposes of our decision that no CDA employee called DCSC regarding this procurement from the time proposals were submitted on June 18 until after the August 20 deadline for the submission of best and final offers. We will also assume that CDA did not receive amendment No. 0002. Even making these assumptions, we conclude that the rejection of the CDA proposal was proper.

While the concept of responsiveness is not technically applicable to negotiated procurements, where an offer does not meet a material requirement of the RFP, it is permissible for the contracting officer to reject that offer as technically unacceptable. B&D Supply Co. of Arizona, B-210023, July 1, 1983, 83-2 CPD ¶ 50. Here, it is clear that the CDA proposal did not meet a material requirement of the RFP--CDA offered to supply only one building rather than the two required, contrary to the amended RFP requirements.^{1/} Consequently, the materiality of amendment No. 0001 need not be considered.

Finally, while CDA denies having received amendment No. 0002, we note that the risk of nonreceipt of an amendment generally rests with the offeror. The fact that one offeror does not receive a material amendment to the RFP, and is thereby precluded from receiving the award, has no effect on the validity of the award to another offeror where full and open competition and reasonable prices are obtained and the record does not show a deliberate attempt by the contracting agency to exclude the offeror from the competition. International Association of Fire Fighters, B-220757, Jan. 13, 1986, 86-1 CPD ¶ 31. The record indicates that four acceptable offers were received and that reasonable prices were obtained on this procurement. CDA has not alleged that the agency was deliberately attempting to exclude it from the competition and the record does not suggest such an attempt.

Accordingly, the protest is denied.


Harry R. Van Cleve
General Counsel

^{1/} Parenthetically, we note that CDA's offer expired by its own terms on August 17, 1986 and thus was unavailable for acceptance in any event, since the offer was not revived prior to award.